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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R. S .A. No. 3741 of 2007
Date of decision: 19.11.2007

Surjit Singh **...Appellant**

Versus

Muni Lal **...Respondent**

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. R.K.Joshi, Advocate for the appellant.

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RAJESH BINDAL, J.

The defendant is in appeal before this Court having lost in both the Courts below whereby suit filed by the respondent seeking permanent and mandatory injunction against the appellant/defendant was decreed.

The dispute in the present case is regarding the boundary wall of respondent/plaintiff's house, which was sought to be demolished or used for resting the roof of the room/shop constructed by the appellant/respondent in his area. It has concurrently been found by both the Courts below that after the purchase of land in question, the respondent/plaintiff had constructed his house on the land in the year 1977 and appellant/defendant raised construction in his area in the year 1992-93. Once it is proved that respondent/plaintiff had constructed his house much prior to the date when the appellant/defendant constructed his house, there was no other conclusion possible except that boundary wall in question belongs to the respondent/plaintiff. It was this boundary wall, which was sought to be tampered with and used by the appellant/defendant.

Considering the material placed on record, learned Lower Appellate Court restrained the appellant/defendant from demolishing or changing the nature of the same in any manner and further a direction was given for removal of the temporary shed for birds rested on the boundary wall. Further direction was given to the appellant/defendant to provide support to the lintel which was rested on the boundary wall under ownership of respondent/plaintiff by constructed a new separate wall in his area. However, it was left to the

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parties to settle the dispute amongst themselves, if they like so.

Learned counsel for the appellant submitted that suit filed by the respondent/plaintiff deserves dismissal for the simple reason that construction was raised by appellant/defendant long back, which was in his knowledge and accordingly, he was estopped from filing the suit at such a late stage. However, when confronted with the fact as to whether such a plea was raised before the trial Court and an issue to that effect has been framed, the answer had to be in the negative. Accordingly, the same cannot be considered at this stage. Another contention raised by learned counsel for the appellant is that the suit should have been dismissed as barred by limitation. Even this issue is somewhat related with the earlier issue. No such plea regarding limitation was raised either before the trial Court or even before the learned Lower Appellate Court as no issue was framed thereon. Issue regarding limitation is a mixed question of facts and law. As the facts of the case suggest, the appellant/defendant utilized the boundary wall of respondent/plaintiff for his use knowing well that he was not owner thereof, instead of litigating in the Court, they should have settled the matter themselves. Even learned Lower Appellate court after passing the decree in favour of the respondent/plaintiff had observed that it was open for the parties to settle the matter. The appellant as well as respondent are immediate neighbours. It is in the interest of justice that the present litigation comes to an end early.

Accordingly, I do not find any substantial question of law arises in this appeal and the same is dismissed.

November 19, 2007 **(Rajesh Bindal)**
Pka **Judge**